

RECENT DECISIONS.

PRODUCTION.

The next case, *Wilson v. Raffalovich*, p. 553, is on the subject of the production of documents, and seems an instance of *summum jus summa injuria*, though Cotton, L.J., declares (p. 560) that "no man can be said to suffer an injustice if, when he comes to sue in a Court, the rules of the Court applicable to suitors who seek to enforce their rights are enforced in his case." The facts were these—The underwriters, having paid R. & Co., the insured firm, for a total loss of cargo, commenced an action against the shipowners in the name of R. & Co., to recover the value of the goods. A *consent* order was made for an affidavit on production by the plaintiffs, and a further order having been made that both members of the firm of R. & Co. should put in a further and better affidavit, the solicitor of the underwriters deposed that the members of the firm of R. & Co. were abroad, and would not give any further discovery, and that the real plaintiffs had done all they could do to comply with the order. The Court of Appeal, nevertheless, held that the case must be treated as if the nominal plaintiffs on the record were suing for their own benefit, and that the making a further affidavit could not be dispensed with. This reversed the decision of the Court below, which had held that under the above circumstances the real plaintiffs ought to be relieved from the necessity of a further compliance with the orders, Pollock, B., observing that the defendants suffered no injustice, for that if the underwriters had taken an assignment and sued in their own names under the Jud. Act, 1873, sec. 25, sub-sec. 6 (of R. S. O., c. 116, sec. 7) no Court could possibly have made an order against them for production of documents not in the possession of themselves or their agents. The Court of Appeal, however, agreed in taking a different view. "It is the misfortune of the real plaintiffs," said Brett, L.J., "that, being obliged to bring the action in the name of the parties to the contract who are abroad, they cannot get those persons, in whose name they

are bound to sue, to obey the procedure of the Court. It is a misfortune, but it may be a misfortune without a legal remedy. The order that the plaintiffs on the record should make the further answer is a proper order; they have not made that answer, and under those circumstances I think that the order made by the Divisional Court cannot be supported." Counsel for the respondent then asked that the words "plaintiff or plaintiffs" should be inserted in the order, but Cotton, L.J., said he thought this unnecessary, for that "if an attachment is moved for against the plaintiff who does not make an affidavit, and it is shown that he is not in a condition to make one, no Court will grant an attachment."

MANDAMUS—CONTROVERTED ELECTION ACT.

The next case it seems expedient to notice is *The Queen v. Hall*, p. 575. In this case the Court of Appeal held that where the Commissioners appointed to inquire into corrupt practices at a parliamentary election have, with reference to a witness before them on such inquiry, exercised their judgment as to the right of such witness to receive their certificate, designed to protect him against future consequences of answers to criminating questions, under sect. 7 of the Imp. Corrupt Practices Prevention Act, 26 and 27 Vic., c. 29, their decision refusing such certificate is conclusive, and cannot be reviewed by *mandamus*, thereby shewing a tendency to dissent from *Reg. v. Price*, L. R. 6 Q. B. 411. There is a very similar section in our Controverted Elections Act, R. S. O., c. 11, sect. 53. Our Act, however, seems to shew more clearly than the Imperial Act, that whether the witness has answered truly is for the discretion of the Court to decide. For it speaks of "full and true answers, to the satisfaction of the judge or judges," whereas the Imperial Act merely says that "where any witness shall answer every question," he shall be entitled to a certificate. Bramwell, L. J., says, p. 588, "It seems to me that this statute must be read: Provided always that where any witness